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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-863

COLUMBIA BROADCASTING SYSTEM, INC.,
Petitioner,

v.

DEMOCRATIC NATIONAL COMMITTEE,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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PETITIONER'S REPLY BRIEF

I

Neither the opposition of the Democratic National Committee ("DNC"), respondent in this case, nor the opposition of Business Executives' Move for Vietnam Peace ("BEM"), respondent in two related cases,[1] disputes that the decision of the court below raises novel and important

[1] *FCC* v. *BEM and DNC*, No. 71-864; *Post-Newsweek Stations, Capital Area, Inc.* v. *BEM*, No. 71-865. Those petitions seek review of the same court of appeals opinion as is involved here and in No. 71-866, *American Broadcasting Companies, Inc.* v. *DNC*. BEM has filed its brief opposing certiorari in all cases, including those in which it is not a respondent.

questions.[2] Indeed, BEM concedes that "major constitutional questions" may lie "imbedded within the court of appeals' decision" and "might be appropriate for review by this Court" if presented in some other context. BEM Opp. 16. Moreover, neither respondent seriously disputes that the court of appeals' decision will undermine the existing Congressional scheme of regulation.[3] Both DNC and BEM argue, however, that this case is not "ripe" for review by this Court because the court of appeals has directed the Commission to implement the decision through further rulemaking.[4]

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[2] In addition, DNC admits that there may be an "apparent" conflict between the decision below and *McIntire* v. *William Penn Broadcasting Co.*, 151 F.2d 597 (3d Cir. 1945), *cert. denied*, 327 U.S. 779 (1946), but suggests that this "is certainly not a conflict that requires resolution by this Court." DNC Opp. 22. Contrary to DNC's suggestion, the rejection by the Third Circuit in *McIntire* of a First Amendment claim of a right to purchase time was an alternative holding, not dicta. This is confirmed by the Third Circuit's subsequent decision in *Avins* v. *Rutgers*, 385 F.2d 151 (3d Cir. 1967), *cert. denied*, 390 U.S. 920 (1968), which, as we pointed out in our petition (pp. 18-19), clearly relies on *McIntire* as a First Amendment decision. We did not suggest in the petition that the *Avins* decision itself is in conflict with the decision of the court below in this case, but rather that it confirms that the *McIntire* decision is in conflict with that decision, and that the authority of *McIntire* has not been eroded by the passage of years.

[3] As we have pointed out, the Communications Act of 1934 embodies a strong Congressional purpose to leave programming choices in the hands of licensees as trustees for the public. CBS Petition, pp. 10-11; App. D. 14-15. In the one area where Congress has departed from this general policy it has deliberately chosen to carve out a narrowly circumscribed exception, creating in Section 315 of the Act specific rights in candidates for public office. In a very recent amendment to Section 315—Public Law 92-225, February 7, 1972—Congress has sought to ensure that candidates for federal office will be able to purchase a "reasonable" amount of time. This recent legislation, enacted following the court of appeals' decision, reflects the continuing Congressional policy not to extend individual rights to purchase time beyond the political campaign field.

[4] DNC Opp. 12-19; BEM Opp. 16-29.

It is ironic that DNC and BEM, who sought and obtained a sweeping constitutional decision from the court of appeals requiring the Commission to embark on an entirely new regulatory course, now argue that this Court should not review this novel constitutional holding until the Commission has completed rulemaking. Before the court of appeals, DNC and BEM did not suggest that this case was not ripe for decision, even though—as they now emphasize [5]—the Commission's fairness doctrine inquiry had been initiated prior to the court of appeals' decision.[6] DNC and BEM fail to explain how what was apparently quite ripe for decision by the court of appeals is suddenly not ripe for review by this Court.[7]

In fact, the ripeness argument misconceives the nature of the decision below and what is at issue in this case. The question presented to the court of appeals and this Court is not whether a Commission rule requiring the sale of advertising time for public issue discussion would be appropriate or legal, but whether such a rule is constitutionally compelled. The court of appeals' holding on this point is clearly ripe for review. For nothing that the Commission might do on remand or in its fairness doctrine inquiry can change or affect that decision; in Judge McGowan's apt phrase, the Commission is placed in a "constitutional straitjacket." [8]

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[5] DNC Opp. 14; BEM Opp. 22-23.

[6] *Notice of Inquiry*, Docket No. 19260, 30 F.C.C.2d 26, 33 (1971).

[7] Indeed, the argument of BEM and DNC that this case is not ripe for review by this Court because of the pendency of Commission rulemaking proceedings should not, if carried to its logical conclusion, result in a denial of certiorari. Rather, it would suggest that the Court should vacate the judgment of the court of appeals below (as having been rendered in a case not then ripe for review), and should remand the case to the Commission to conduct its fairness doctrine inquiry free of the constitutional straitjacket imposed by the court of appeals.

[8] App. A 44. (App. —— references are to the Appendices to the Petition for Certiorari in this case.)

The new notice of inquiry issued by the Commission in compliance with the court of appeals' mandate plainly indicates that the Commission believes that it is bound by a rigid constitutional requirement and that it is not free to implement its own conception of the public interest.[9] Acting under the constraints of the decision below, the Commission's rulemaking cannot involve the exercise of administrative discretion and expertise which would be of assistance to this Court in resolving the difficult constitutional issues presented by this case.

Under the well-settled practice of this Court, the court of appeals' remand of the case to the Commission for further proceedings in no way detracts from the appropriateness of review. Remands are characteristic in cases involving review of agency decisions, including decisions in the communications field, where this Court has been at pains to remind the courts of appeals of the limitations of the judicial review function and the necessity of agency implementation of decisions on review. *FCC* v. *Pottsville Broadcasting Co.*, 309 U.S. 134 (1940). Indeed, some of this Court's major decisions in the communications field have come upon grants of certiorari in cases in which the court of appeals had remanded the matter to the Commission for further action. *E.g.*, *United States* v. *Storer Broadcasting Co.*, 351 U.S. 192 (1956); *FCC* v. *WJR, The Goodwill Station, Inc.*, 337 U.S. 265 (1949); *FCC* v. *Sanders Bros. Radio Station*, 309 U.S. 470 (1940).[10]

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[9] *Further Notice of Inquiry*, Docket No. 19260, FCC 72-117, released Feb. 7, 1972.

[10] Similarly, in the exercise of its jurisdiction to review decisions of the courts of appeals, this Court has granted certiorari to resolve an "important and clear-cut issue of law that is fundamental to the further conduct of the case," even though presented by a judgment requiring further action to be taken by a district court. STERN & GRESSMAN, SUPREME COURT PRACTICE 180 (4th ed. 1969). And this Court has regarded it as particularly significant that the ruling below decided a serious constitutional question. *E.g.*, *United States* v. *General Motors Corp.*, 323 U.S. 373, 377 (1945).

II

Apart from questions of ripeness, the oppositions of DNC and BEM rest upon an unduly broad view of what the Commission held in this case and an unduly narrow view of the decision of the court below. The Commission did not, as respondents appear to suggest, bar broadcasters from presenting editorial advertisements or partisan viewpoints and give a "monopoly" of advertising time to commercial sponsors.[11] In fact, the Commission held that broadcasters are free to present editorial advertisements if they believe that to do so would serve the public interest.[12] Almost without exception, broadcasters do sell some time for such advertisements.[13] Moreover, the Commission emphasized in its decision in this case that broadcasters are obligated, in carrying out their responsibilities under the fairness doctrine, to present partisan voices in their news and public affairs broadcasts.[14] There has been no showing that broadcasters have not fulfilled that responsibility.

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[11] DNC Opp. 6.

[12] App. D 18.

[13] Thus, for example, candidates, their supporters and political parties have had ample opportunities to purchase time on the broadcast media during the frequent federal, state and local election campaigns characteristic of our political system. And Congress has recently amended Section 315 of the Communications Act, which provides "equal opportunities" for candidates, to seek to ensure that candidates for federal office will be able to purchase a "reasonable" amount of time. Public Law 92-225, Feb. 7, 1972. As to advertising time, CBS' policy is to sell such time to candidates, their supporters, political parties and spokesmen on ballot issues during election campaigns. In addition, CBS sells advertising time to political parties, outside of election campaign periods, for expression of views on public issues. See Brief for Intervenor Columbia Broadcasting System, Inc., in *DNC* v. *FCC*, D.C. Cir. No. 24,537, pp. 3-4.

[14] App. D 12. As noted in our petition (p. 5), CBS policy with respect to coverage of public issues provides substantial direct exposure for partisans and partisan views, on a free basis, as part of a total professional journalistic effort.

At the same time, respondents erroneously picture the court of appeals' decision as a narrow one which will not work a basic change in Commission policy. Thus, DNC's suggestion that "the Court below has required the Commission to do nothing more than it had already decided to do" [16] ignores the fact that the court of appeals' decision has placed the Commission in a constitutional straitjacket, requiring it to promulgate rules whether or not it regards such rules as sound policy or in the public interest.

BEM, in its attempt to minimize the significance of the decision below, states that the court of appeals "merely suggested that broadcasters must make reasonable efforts in the selling of advertising time to behave like the able and benign 'trustees' of a highly valuable public resource that they should be and claim to be." [16] Elsewhere, BEM suggests that the court's holding could be satisfied by extending to the sale of advertising time for the discussion of public issues "the same 'trustee' standards and approaches already used by broadcasters in choosing among competing ideas and speakers under the fairness doctrine." [17] This reassuring view of the scope of the decision of the court of appeals bears no resemblance to what the court actually said or held.

As we showed in our petition, the entire thrust of the decision below was a rejection of the exercise of journalistic discretion by broadcast licensees.[18] This is evident

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[15] DNC Opp. 15.

[16] BEM Opp. 15.

[17] BEM Opp. 24 n.61.

[18] CBS Petition, pp. 10-15. Compare a recent decision, also involving DNC, by another panel of the Court of Appeals for the District of Columbia Circuit, emphasizing the importance of licensee discretion in administering the fairness doctrine. *Democratic National Committee* v. *FCC*, —— U.S. App. D.C. ——, —— F.2d —— (No. 71-1637, decided Feb. 2, 1972).

from the language of the court's opinion. Judge Wright characterized the present regulatory scheme as one in which "licensees and bureaucrats decide what issues are 'important,' how 'fully' to cover them, and the format, time and style of the coverage." [19] The interests of the First Amendment can be satisfied, the court held, only if the Commission requires that individual members of the public have "initiative and editorial control," so that "partisans who feel strongly on particular issues may decide on their own to speak out and to speak out in their own way." [20] In sum, the decision below forces the Commission to deprive licensees of the responsibility and authority indispensable to the trustee function. It forces the Commission to create a vacuum to be filled by the haphazard choices of purchasers of advertising time, who are not publicly accountable and who have no duty to serve the public interest.

[19] App. A 23.

[20] *Ibid.*

CONCLUSION

For the reasons stated above and in the petition for certiorari, the writ should be granted.

Respectfully submitted,

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February 11, 1972

In the Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-864

FEDERAL COMMUNICATIONS COMMISSION AND UNITED STATES OF AMERICA, PETITIONERS

v.

BUSINESS EXECUTIVES' MOVE FOR VIETNAM PEACE

FEDERAL COMMUNICATIONS COMMISSION AND UNITED STATES OF AMERICA, PETITIONERS

v.

DEMOCRATIC NATIONAL COMMITTEE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

SUPPLEMENTAL MEMORANDUM FOR THE FEDERAL COMMUNICATIONS COMMISSION AND THE UNITED STATES

We wish to bring two matters to the Court's attention.

1. On February 7, 1972, the Federal Communications Commission reopened Part IV of its inquiry

entitled "The Handling of Public Issues Under the Fairness Doctrine and the Public Interest Standards of the Communications Act" (App. A, *infra*, pp. 4 to 16). This part of the inquiry, which had been initiated before the decision of the court of appeals in this case, see Docket No. 19260, 30 F.C.C. 2d 26, 36 Fed. Reg. 11825,[1] had been suspended because of the Commission's intention to file a petition for a writ of certiorari and pending this Court's decision on the government's subsequent motion for a stay of the judgment of the court of appeals, as respondent Democratic National Committee pointed out, see Brief in Opposition, at p. 14 n. 10. In light of the Court's denial of a stay on January 24, 1972, the Commission has resumed Part IV of its inquiry in compliance with the mandate of the court of appeals. Accordingly, the Commission has asked for "comments which can be of assistance in developing reasonable guidelines governing the determination by licensees of which and how many editorial advertisements will be put on the air" (App. A, *infra*, p. 7).[2]

2. The newly enacted Campaign Communications Reform Act, Title I, P.L. 92-225, approved February 7, 1972 (App. B, *infra*, p. 17), amends the Federal Communications Act to require broadcast licensees to allow reasonable access to their facilities by candi-

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[1] See the government's Petition for a Writ of Certiorari, at p. 15 n. 7.

[2] The Commission has also asked interested persons to comment on whether there should be a right of access to normal programming time "and any other matters that they believe pertinent" (App. A, *infra*, p. 9).

dates for federal elective office. Section 103(a)(2)(A) of the Reform Act amends Section 312(a) of the Communications Act (47 U.S.C. 312(a)) to read as follows:

> The Commission may revoke any station license or construction permit—
>
> > (7) for willful or repeated failure to allow reasonable access to or permit purchase of reasonable amounts of time for the use of a broadcasting station by a legally qualified candidate for Federal elective office on behalf of his candidacy.

Section 103(a)(2)(B) of the new statute amends Section 315(a) of the Communications Act (47 U.S.C. 315(a)) by adding the three italicized words to the following language:

> No obligation is imposed *under this subsection* upon any licensee to allow the use of its station by any [political] candidate [emphasis added].

These amendments are, we submit, consistent with the view set forth in our petition for a writ of certiorari that determination of public interest requirements for the presentation of issues of public importance within the inherent limitations of the broadcast spectrum is a practical task peculiarly suited to resolution by Congress or by the Commission.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

JOHN E. PETTIT,
General Counsel,
Federal Communications Commission.

FEBRUARY 1972.

APPENDIX A

Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

Docket No. 19260

In the Matter of

The Handling of Public Issues Under the Fairness Doctrine and the Public Interest Standards of the Communications Act,

and

Guidelines for the Acceptance by Broadcast Licensees of Editorial Advertising

FURTHER NOTICE OF INQUIRY

Adopted:

February 3, 1972; Released: February 7, 1972

By the Commission:

Commissioner Johnson concurring and issuing a statement; Commissioner H. Rex Lee absent.

1. This Further Notice concerns Part IV of our Notice of June 9, 1971, including particularly the formulation of guidelines for the acceptance by broadcasters of editorial advertising. This latter facet is both the issue involved in *Business Executives' Move for Vietnam Peace* v. *F. C. C.*, — U.S. App. D.C. —, 450 F. 2d 642 (1971), and also an important aspect of the Part IV Inquiry—"access generally to the broadcast media for the discussion of public issues." We have delayed comment on Part IV because, as

discussed below, we are seeking further review of the above decision. However, the discussion makes clear that we must now move immediately to the consideration of guidelines in the area of editorial advertising. That being so, there is no reason to delay the filing of Part IV comments. Indeed, it would be helpful to have such comments before us when we consider the other issues in this Inquiry, since the issues are all inter-related to some degree. That does not mean that we shall decide all the issues at the same time. Circumstances appear to require more expeditious resolution of some aspects of the Inquiry than others. This Notice deals with one such area.

I

2. In *Business Executives' Move for Vietnam Peace* v. *F. C. C., supra,* the United States Court of Appeals for the District of Columbia Circuit held that a broadcast licensee may not, as a general policy, refuse to sell advertising time to groups or individuals wishing to speak on controversial public issues. While the Court left "undisturbed the licensee's basic right to exercise judgment and control in public issue programming" and "normal programming time," and it stated that no particular person or group has an absolute right to have his (or its) message carried, it ruled that in the broadcaster's allocation of advertising time it is not permissible to maintain a "total, flat ban on editorial advertising." The Court stated that

> "We hold specifically that a flat ban on paid public issue announcements is in violation of the First Amendment, at least when other sorts of paid announcements are accepted. We do not hold, however, that the planned announcements

> of the petitioners or, for that matter, of any other particular applicant for air time must necessarily be accepted by broadcast licensees. Rather we confine ourselves to invalidating the flat ban alone, leaving it up to the licensees and the Commission to develop and administer reasonable procedures and regulations determining which and how many 'editorial advertisements' will be put on the air."

3. On January 3, 1972 a petition for a writ of certiorari was filed on behalf of the Commission in the Supreme Court of the United States. No. 71-864, 40 U.S.L.W. 3317 (January 11, 1972). The Supreme Court has not yet acted on this petition. However, on January 24, 1972, the Court denied an application for a stay of mandate. Accordingly, the Commission is under a mandate to carry out the decision of the Court of Appeals which instructed the Commission as follows:

> "On remand, the Commission should develop reasonable regulatory guidelines to deal with editorial advertisements. Petitioners should be allowed to reapply for advertising time; and, unless their presentations are found to be excludable under the Commission's guidelines, their applications should be accepted. Since the issues on which BEM and DNC seek to speak are current and changing, it is essential that regulations be developed speedily and that the affected broadcasters pass promptly upon petitioners' applications to buy time."

4. The purpose of this Notice is to solicit the views of all interested parties on the nature and content of appropriate procedures and guidelines to be adopted

by the Commission in furtherance of the Court's mandate. We welcome all comments which can be of assistance in developing reasonable guidelines governing the determination by licensees of which and how many editorial advertisements will be put on the air. As a general approach, suggested guidelines or procedures should so far as possible be designed to avoid frequent recourse to individual requests for Commission rulings in particular situations. In particular, we urge parties filing comments to address the following areas:

a. May a licensee limit the time available for editorial advertisements and, if so, on what basis?

b. What regulation may the licensee make as to the placement of editorial advertisements?

c. May a licensee prevent domination by a few groups or a few viewpoints and, if so, by what means?

d. May a licensee reject a proferred advertisement on the ground that the particular viewpoint has been sufficiently expressed, short of finding undue dominance?

e. May a licensee reject a proferred advertisement on standards of taste and suitability for access to the home?

f. May a licensee reject a proffered advertisement on the ground that its subject matter is of little or no significance or interest to the community?

g. Are any restrictions on content permissible short of a finding that the material is outside the protection of the First Amendment?

h. Should the Commission's Cullman doctrine[1] be applicable to editorial and controversial issue advertisements which the licensee would not have aired in the first place except for the required sale of editorial advertising time?

i. What is the relationship generally of editorial advertising to the licensee's responsibilities under the fairness doctrine to make available a reasonable opportunity for the presentation of conflicting views on controversial issues of public importance? In this connection consideration should be given to the decision of the Supreme Court in *Red Lion Broadcasting Co.* v. *F.C.C.*, 395 U.S. 367 (1969).

5. We are issuing this Further Notice of Inquiry rather than issuing guidelines without calling for comments because we believe that we need the views of those who would be confronted with the day-to-day practicalities of applying the guidelines. We are allowing a reasonable time for the submission of comments commensurate with the importance of the issues. However, prompt Commission action is required, and we intend to expedite our consideration of this matter. No extensions of time for comments are contemplated.

II

6. The discussion in I has dealt with access for editorial advertising. The other aspect of the Inquiry in Part IV is the matter of the right of access to programming time. We have set forth our view that

[1] See Cullman Broadcasting Co., 40 F.C.C. 576 (1963), which held that a licensee cannot avoid his fairness responsibilities simply because of his inability to obtain sponsorship for the presentation of a viewpoint.

the ruling in *Business Executives' Move for Vietnam Peace* v. *F.C.C.*, *supra*, does not extend to programming time. See *Committee of One Million*, October 22, 1971, FCC 71-1096. We have also set forth in Part IV issues which would be generally pertinent here (see para. 19, Notice of Inquiry of June 9, 1971). We shall not repeat that discussion here. Parties are invited to comment on those issues and any other matters that they believe pertinent.

III

7. Accordingly, pursuant to applicable procedures set forth in Section 1.415 of the Commission's Rules and Regulations, 47 CFR 1.415 (1972), interested parties may file comments on or before March 8, 1972, and reply comments on or before March 23, 1972, a schedule to which we intend to adhere (see para. 5, *supra*). In accordance with the provisions of Section 1.419 of the Rules, 47 CFR 1.419 (1972), an original and 14 copies of all comments and replies shall be furnished the Commission. All relevant and timely comments and reply comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may also take into account other relevant information before it, in addition to the specific comments invited by this Notice.

8. Because of the importance of the matters in this Docket, we believe that some form of oral presentations will be helpful. If it is determined to have such presentations cover the issues in Part I of this Further Notice, we shall make this the first order of business at the oral proceedings and shall schedule such proceedings promptly after receipt of the reply comments. Finally, the authority for this Further

Notice is that stated in para. 24 of the Notice of Inquiry, June 9, 1971.

FEDERAL COMMUNICATIONS COMMISSION *

BEN F. WAPLE
Secretary

BEM Notice of Inquiry

[Notice of Inquiry on guidelines governing the purchase of time for editorial advertising in response to the mandate of the Court of Appeals in *Business Executives' Move for Vietnam Peace* v. *F.C.C.*, 450 F.2d 642 (D.C. Cir. 1971)]

Concurring Opinion of Commissioner Nicholas Johnson

I concur in the Commission's decision to put out a Notice of Inquiry as to what regulations or guidelines the FCC should promulgate regarding the purchase of airtime for "editorial advertisements." Certainly a decision of this magnitude should not be made without some opportunity for comment from broadcasters and citizens alike.

I. The Questions

The Commission poses nine questions to which it asks interested parties to address themselves. Since the comments of interested parties need not be limited to the particular questions posed by the Commission, I shall not object by way of dissent to any of the

* See attached statement of Commissioner Johnson.

particular questions. However, I do question the wisdom of some of these questions, for I believe that it would be unconstitutional for the Commission to answer them in the affirmative.

In discussing the limitations that may be placed on the purchase of advertising time in *BEM* the Court stated:

> The content of the idea which the excluded speakers seek to promote is—emphatically—*not* permitted as a distinguishing factor in itself. Indeed, the existence of an exclusionary discrimination apparently based on the content of ideas presents an additional, or greatly heightened, *prima facie* constitutional violation. Both free speech and equal protection principles condemn any discrimination among speakers which is based on what they intend to say. If the First Amendment prohibits anything at all, it must be a censorial discrimination among ideas. (Emphasis in original.)[1]

And the Court went on to say:

> It is well established in First Amendment law governing access to forums that "reasonable regulations" may be promulgated and enforced to limit the exercise of free speech. At the least, there may be regulations determining the time, place and manner of speech.[2]

Then the Court proceeded to state a few of the possible "traffic" regulations that may be promulgated by the Commission: a limit on the total amount of

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[1] *Business Executives' Move for Vietnam Peace* v. *F.C.C.*, 450 F. 2d 642, 660 (D.C. Cir. 1971).

[2] *Id.*, 663.

editorial advertisement time available; limitations on the right of placement in the time period of the advertiser's choice; a limit on the amount of time available to a particular group or adherents of a particular viewpoint; limitations on the amount of free time available to those unable to pay.[3]

Some of the questions posed may raise constitutional objections:

> (e) May a licensee reject a proffered advertisement on standards of taste and suitability for access to the home?
>
> (f) May a licensee reject a proffered advertisement on the ground that its subject matter is of little or no significance or interest to the community?

Affirmative answers to these two questions would transcend the "time, place and manner" limitations which the Court authorized the Commission to enact.

The only reason I concur and do not dissent to this Notice of Inquiry is that the mere posing of these questions does not bind the Commission to adopting an affirmative answer to these questions. Moreover, interested citizens and broadcasters should have the opportunity to comment on the whole range of questions raised by the *BEM* decision, and I would like to have the benefit of those comments.

II. Interim Procedures

The question remains, what do we do in the meantime? What is our proper response to those petitions which might be filed between now and the promulgation of our regulations? *BEM* is now the law of the land. This is implicit in the fact that the Commission

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[3] *Id.*, 663-665.

now asks for comments and prepares to issue guidelines, even before the United States Supreme Court acts on the pending petition for *certiorari*. This is so, of course, because after the decision of the Court of Appeals some six months ago (August 3, 1971), the Commission's petition for rehearing was denied by the Court (October 4, 1971), our motion for a stay of mandate was denied by the Court (October 22, 1971), and our motion for a stay of mandate was denied by the Supreme Court (January 24, 1972).

Since *BEM* is now the law of the land, we must rule on whatever petitions that are filed according to the law of *BEM:* there can be no flat ban on "editorial advertisements." I have absolutely no idea whether any such petitions are going to be filed in the next 45 days or so. But it is clear that if any are filed, it will not be appropriate for the Commission to act as it did last August 6, in the *Communications Workers of America* case.[4] On the day after the *BEM* decision, CWA was turned down by NBC and CBS owned-and-operated stations in their request to buy time for "editorial advertisements." In that opinion, to which I dissented, the Commission stated that it had not yet had time to promulgate the regulations suggested by the Court of Appeals. The same excuse is not open to the Commission now. In the six months since *BEM*, even while appealing the *BEM* case to the Supreme Court, the Commission surely could have adopted regulations to go into effect whenever the *BEM* case became the law of the land.

Now we are faced with that very situation. *BEM* is the law, and there are no regulations. How should we act?

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[4] *Communications Workers of America*, Request for Declaratory Ruling, 31 F.C.C.2d 841 (1971).

BEM said that it was unconstitutional for a licensee to enact a flat ban on editorial advertising. The Court's opinion shows that the presumption clearly has to be in favor of the petitioner, not the licensee, in such a dispute:

> It being established that there is a strong and specific First Amendment interest in editorial advertising and that the policies discriminatorily barring such expression work a *prima facie* violation of constitutional principles, we must consider the countervailing considerations raised by the Commission and the broadcaster-intervenors. In order to justify the policy at issue, they must show some very substantial harm that would be caused by acceptance of editorial advertising—a sort of harm great enough to override the First Amendment interests at stake and a sort of harm not already involved in the acceptance of commercial and "noncontroversial" advertising. Only such a showing could convince us that the ban on editorial advertisements is supported by sufficient countervailing values and is not based solely on the content of the ideas conveyed.[5]

Thus, in the absence of any regulations, the burden is on the *broadcaster*, not the citizen. The broadcaster must explain to the FCC why he cannot accept the citizen's money and put the editorial advertisement on the air: he must make a showing of "some very substantial harm that would be caused by acceptance of editorial advertising."

Since the Court of Appeals went out of its way to state that "[s]ince the issues on which BEM and DNC seek to speak are current and changing, it is essential that regulations be developed speedily and

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[5] *B.E.M.* v. *F.C.C.*, *supra* at 662.

that the affected broadcasters pass promptly upon petitioners' applications to buy time," [6] I do not think that this Commission has any alternative but to issue an interim rule, pending the outcome of this Notice of Inquiry, that all requests for the purchase of time for editorial advertisements must be accepted by the broadcasters, absent showing of "some very substantial harm."

I do not honestly know what this Commission is prepared to do if, in fact, such a petition is filed between now and the time the regulations are promulgated. As with any matter of free speech, time is of the essence. Certainly this is the cardinal principle underlying the Supreme Court's decision in *The New York Times Co.* v. *U.S.*, 403 U.S. 713 (1971), where the Supreme Court once again affirmed the age-old presumption against any form of prior restraint. Inasmuch as the Commission affords no guidance on this issue whatsoever, I simply must assume that the Commission intended by its silence on the issue to adopt the interim rule of law implicit in the Court's opinion in *BEM:* absent a showing of "some very substantial harm that would be caused by acceptance of editorial advertising," the broadcaster is required by the First Amendment to accept the request for paid access for the airing of editorial advertising.[7]

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[6] *Id.*, 665.

[7] I do not consider it necessary to discuss in detail what sort of showing would be appropriate under the "very substantial harm" test. I must state that I find it hard to believe that the placement of a few editorial advertisements into any broadcaster's schedule—accompanied, of course, by good money—would do anything but enrich the broadcaster. I know of few cases in which broadcasters have been unable to find the airtime to squeeze just one more spot on the air,

Accordingly, I concur.

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especially when the order is accompanied by payment. Is that not the hallmark of our commercial broadcasting system?

On the other hand, there is the question as to effect of editorial advertising on the broadcaster's fairness obligations. For the purposes of argument, I shall pose three distinct examples in order to assess this question.

The first case is that of a citizen who seeks to buy time for an issue that everyone agrees is not controversial and thus not subject to the Fairness Doctrine. These spots are by definition non-controversial and should go on the air without question, since they do not give rise to the obligation to present the other side of a controversial issue, and thus no revenue loss to the broadcaster can result under *Cullman*. 40 F.C.C. 576 (1963).

The second situation is if the issue being discussed by the editorial spots has already been heavily covered by the broadcaster, and the coverage has already been adequately balanced. Such an instance might be Vietnam, the subject of BEM's spots. No *Cullman* problems would arise since it is unlikely that any overall imbalance would result from the acceptance of a few more minutes of time for or against the war.

The third situation is that in which a controversial issue not previously covered by the broadcaster is discussed in the spots. Here, the inclusion of airtime on one side of the controversy will not create any obligations that do not already exist on the part of the broadcaster: He always has had the obligation under the Fairness Doctrine to cover the controversy at his own expense. Thus, he cannot really object to the particular form (editorial spots) in which the controversy has first been broached on his station—especially when it was produced at no cost to him.

APPENDIX B

AN ACT

To promote fair practices in the conduct of election campaigns for Federal political offices, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Election Campaign Act of 1971".

TITLE I—CAMPAIGN COMMUNICATIONS

SHORT TITLE

SEC. 101. This title may be cited as the "Campaign Communications Reform Act".

DEFINITIONS

SEC. 102. For purposes of this title:

(1) The term "communications media" means broadcasting stations, newspapers, magazines, outdoor advertising facilities, and telephones; but, with respect to telephones, spending or an expenditure shall be deemed to be spending or an expenditure for the use of communications media only if such spending or expenditure is for the costs of telephones, paid telephonists, and automatic telephone equipment, used by a candidate for Federal elective office to communicate with potential voters (excluding any costs of telephones incurred by a volunteer for use of telephones by him).

(2) The term "broadcasting station" has the same meaning as such term has under section 315(f) of the Communications Act of 1934.

(3) The term "Federal elective office" means the office of President of the United States, or of Senator or Representative in, or Resident Commissioner or Delegate to, the Congress of the United States (and for purposes of section 103(b) such term includes the office of Vice President).

(4) The term "legally qualified candidate" means any person who (A) meets the qualifications prescribed by the applicable laws to hold the Federal elective office for which he is a candidate, and (B) is eligible under applicable State law to be voted for by the electorate directly or by means of delegates or electors.

(5) The term "voting age population" means resident population, eighteen years of age and older.

(6) The term "State" includes the District of Columbia and the Commonwealth of Puerto Rico.

MEDIA RATE AND RELATED REQUIREMENTS

SEC. 103. (a)(1) Section 315(b) of the Communications Act of 1934 is amended to read as follows:

"(b) The charges made for the use of any broadcasting station by any person who is a legally qualified candidate for any public office in connection with his campaign for nomination for election, or election, to such office shall not exceed—

"(1) during the forty-five days preceding the date of a primary or primary runoff election and during the sixty days preceding the date of a general or special election in which such person

is a candidate, the lowest unit charge of the station for the same class and amount of time for the same period; and

"(2) at any other time, the charges made for comparable use of such station by other users thereof."

(2)(A) Section 312(a) of such Act is amended by striking "or" at the end of clause (5), striking the period at the end of clause (6) and inserting in lieu thereof a semicolon and "or", and adding at the end of such section 312(a) the following new paragraph:

"(7) for willful or repeated failure to allow reasonable access to or to permit purchase of reasonable amounts of time for the use of a broadcasting station by a legally qualified candidate for Federal elective office on behalf of his candidacy."

(B) The second sentence of section 315(a) of such Act is amended by inserting "under this subsection" after "No obligation is imposed".

(b) To the extent that any person sells space in any newspaper or magazine to a legally qualified candidate for Federal elective office, or nomination thereto, in connection with such candidate's campaign for nomination for, or election to, such office, the charges made for the use of such space in connection with his campaign shall not exceed the charges made for comparable use of such space for other purposes.

LIMITATIONS OF EXPENDITURES FOR USE OF COMMUNICATIONS MEDIA

SEC. 104. (a)(1) Subject to paragraph (4), no legally qualified candidate in an election (other than a primary or primary runoff election) for a Federal elective office may—

(A) spend for the use of communications media on behalf of his candidacy in such election a total amount in excess of the greater of—

(i) 10 cents multiplied by the voting age population (as certified under paragraph (5)) of the geographical area in which the election for such office is held, or

(ii) $50,000, or

(B) spend for the use of broadcast stations on behalf of his candidacy in such election a total amount in excess of 60 per centum of the amount determined under subparagraph (A) with respect to such election.

(2) No legally qualified candidate in a primary election for nomination to a Federal elective office, other than President, may spend—

(A) for the use of communications media, or

(B) for the use of broadcast stations,

on behalf of his candidacy in such election a total amount in excess of the amounts determined under paragraph (1) (A) or (B), respectively, with respect to the general election for such office. For purposes of this subsection a primary runoff election shall be treated as a separate primary election.

(3)(A) No person who is a candidate for presidential nomination may spend—

(i) for the use in a State of communications media, or

(ii) for the use in a State of broadcast stations,

on behalf of his candidacy for presidential nomination a total amount in excess of the amounts which

would have been determined under paragraph (1) (A) or (B), respectively, had he been a candidate for election for the office of Senator from such State (or for the office of Delegate or Resident Commissioner in the case of the District of Columbia or the Commonwealth of Puerto Rico).

(B) For purposes of this paragraph (3), a person is a candidate for presidential nomination if he makes (or any other person makes on his behalf) an expenditure for the use of any communications medium on behalf of his candidacy for any political party's nomination for election to the office of President. He shall be considered to be such a candidate during the period—

(i) beginning on the date on which he (or such other person) first makes such an expenditure (or, if later, January 1 of the year in which the election for the office of President is held), and

(ii) ending on the date on which such political party nominates a candidate for the office of President.

For purposes of this title and of section 315 of the Communications Act of 1934, a candidate for presidential nomination shall be considered a legally qualified candidate for public office.

(C) The Comptroller General shall prescribe regulations under which any expenditure by a candidate for presidential nomination for the use in two or more States of a communications medium shall be attributed to such candidate's expenditure limitation in each such State, based on the number of persons in such State who can reasonably be expected to be reached by such communications medium.

(4)(A) For purposes of subparagraph (B):

(i) The term "price index" means the average over a calendar year of the Consumer Price Index (all items—United States city average) published monthly by the Bureau of Labor Statistics.

(ii) The term "base period" means the calendar year 1970.

(B) At the beginning of each calendar year (commencing in 1972), as there becomes available necessary data from the Bureau of Labor Statistics of the Department of Labor, the Secretary of Labor shall certify to the Comptroller General and publish in the Federal Register the per centum difference between the price index for the 12 months preceding the beginning of such calendar year and the price index for the base period. Each amount determined under paragraph (1)(A)(i) and (ii) shall be increased by such per centum difference. Each amount so increased shall be the amount in effect for such calendar year.

(5) Within 60 days after the date of enactment of this Act, and during the first week of January in 1973 and every subsequent year, the Secretary of Commerce shall certify to the Comptroller General and publish in the Federal Register an estimate of the voting age population of each State and congressional district for the last calendar year ending before the date of certification.

(6) Amounts spent for the use of communications media on behalf of any legally qualified candidate for Federal elective office (or for nomination to such office) shall, for the purposes of this subsection, be deemed to have been spent by such candidate. Amounts spent for the use of communications media by or on behalf of any legally qualified candidate for the office of Vice President of the United States

shall, for the purposes of this section, be deemed to have been spent by the candidate for the office of President of the United States with whom he is running.

(7) For purposes of this section and section 315 (c) of the Communications Act of 1934—

(A) spending and charges for the use of communications media include not only the direct charges of the media but also agents' commissions allowed the agent by the media, and

(B) any expenditure for the use of any communications medium by or on behalf of the candidacy of a candidate for Federal elective office (or nomination thereto) shall be charged against the expenditure limitation under this subsection applicable to the election in which such medium is used.

(b) No person may make any charge for the use by or on behalf of any legally qualified candidate for Federal elective office (or for nomination to such office) of any newspaper, magazine, or outdoor advertising facility, unless such candidate (or a person specifically authorized by such candidate in writing to do so) certifies in writing to the person making such charge that the payment of such charge will not violate paragraph (1), (2), or (3) of subsection (a), whichever is applicable.

(c) Section 315 of the Communications Act of 1934 is amended by redesignating subsection (c) as subsection (g) and by inserting after subsection (b) the following new subsections:

"(c) No station licensee may make any charge for the use of such station by or on behalf of any legally qualified candidate for Federal elective office

(or for nomination to such office) unless such candidate (or a person specifically authorized by such candidate in writing to do so) certifies to such licensee in writing that the payment of such charge will not violate any limitation specified in paragraph (1), (2), or (3) of section 104(a) of the Campaign Communications Reform Act, whichever paragraph is applicable.

"(d) If a State by law and expressly—

"(1) has provided that a primary or other election for any office of such State or of a political subdivision thereof is subject to this subsection,

"(2) has specified a limitation upon total expenditures for the use of broadcasting stations on behalf of the candidacy of each legally qualified candidate in such election,

"(3) has provided in any such law an unequivocal expression of intent to be bound by the provisions of this subsection, and

"(4) has stipulated that the amount of such limitation shall not exceed the amount which would be determined for such election under section 104(a)(1)(B) or 104(a)(2)(B) (whichever is applicable) of the Campaign Communications Reform Act had such election been an election for a Federal elective office or nomination thereto;

then no station licensee may make any charge for the use of such station by or on behalf of any legally qualified candidate in such election unless such candidate (or a person specifically authorized by such candidate in writing to do so) certifies to such licensee in writing that the payment of such charge will not violate such State limitation.

"(e) Whoever willfully and knowingly violates the provisions of subsection (c) or (d) of this section shall be punished by a fine not to exceed $5,000 or imprisonment for a period not to exceed five years, or both. The provisions of sections 501 through 503 of this Act shall not apply to violations of either such subsection.

"(f)(1) For the purposes of this section:

"(A) The term 'broadcasting station' includes a community antenna television system.

"(B) The terms 'licensee' and 'station licensee' when used with respect to a community antenna television system, means the operator of such system.

"(C) The term 'Federal elective office' means the office of President of the United States, or of Senator or Representative in, or Resident Commissioner or Delegate to, the Congress of the United States.

"(2) For purposes of subsections (c) and (d), the term 'legally qualified candidate' means any person who (A) meets the qualifications prescribed by the applicable laws to hold the office for which he is a candidate and (B) is eligible under applicable State law to be voted for by the electorate directly or by means of delegates or electors."

REGULATIONS

SEC. 105. The Comptroller General shall prescribe such regulations as may be necessary or appropriate to carry out sections 102, 103(b), 104(a), and 104(b) of this Act.

PENALTIES

SEC. 106. Whoever willfully and knowingly violates any provision of section 103(b), 104(a), or 104 (b) or any regulation under section 105 shall be punished by a fine of not more than $5,000 or by imprisonment of not more than five years, or both.

TITLE II—CRIMINAL CODE AMENDMENTS

SEC. 201. Section 591 of title 18, United States Code, is amended to read as follows:

§ 591. Definitions

"When used in sections 597, 599, 600, 602, 608, 610, and 611 of this title—

"(a) 'election' means (1) a general, special, primary, or runoff election, (2) a convention or caucus of a political party held to nominate a candidate, (3) a primary election held for the selection of delegates to a national nominating convention of a political party, (4) a primary election held for the expression of a preference for the nomination of persons for election to the office of President, and (5) the election of delegates to a constitutional convention for proposing amendments to the Constitution of the United States;

"(b) 'candidate' means an individual who seeks nomination for election, or election, to Federal office, whether or not such individual is elected, and, for purposes of this paragraph, an individual shall be deemed to seek nomination for election, or election, to Federal office, if he has (1) taken the action necessary under the law of a State to qualify himself for nomination for election, or election, or (2) received contri-

butions or made expenditures, or has given his consent for any other person to receive contributions or make expenditures, with a view to bringing about his nomination for election, or election, to such office;

"(c) 'Federal office' means the office of President or Vice President of the United States, or Senator or Representative in, or Delegate or Resident Commissioner to, the Congress of the United States;

"(d) 'political committee' means any individual, committee, association, or organization which accepts contributions or makes expenditures during a calendar year in an aggregate amount exceeding $1,000;

"(e) 'contribution' means—

"(1) a gift, subscription, loan, advance, or deposit of money or anything of value (except a loan of money by a national or State bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business), made for the purpose of influencing the nomination for election, or election, of any person to Federal office, for the purpose of influencing the results of a primary held for the selection of delegates to a national nominating convention of a political party or for the expression of a preference for the nomination of persons for election to the office of President, or for the purpose of influencing the election of delegates to a constitutional convention for proposing amendments to the Constitution of the United States;

"(2) a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a contribution for such purposes;

"(3) a transfer of funds between political committees;

"(4) the payment, by any person other than a candidate or political committee, of compensation for the personal services of another person which are rendered to such candidate or political committee without charge for any such purpose; and

"(5) notwithstanding the foregoing meanings of 'contribution', the word shall not be construed to include services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee;

"(f) 'expenditure' means—

"(1) a purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value (except a loan of money by a national or State bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business), made for the purpose of influencing the nomination for election, or election, of any person to Federal office, for the purpose of influencing the result of a primary held for the selection of delegates to a national nominating convention of a political party or for the expression of a preference for the nomination of persons for election to the office of President, or for the purpose of influencing the election of dele-

gates to a constitutional convention for proposing amendments to the Constitution of the United States;

"(2) a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make any expenditure; and

"(3) a transfer of funds between political committees;

"(g) 'person' and 'whoever' mean an individual, partnership, committee, association, corporation, or any other organization or group of persons; and

"(h) 'State' means each State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.".

SEC. 202. Section 600 of title 18, United States Code, is amended to read as follows:

"§ 600. Promise of employment or other benefit for political activity

"Whoever, directly or indirectly, promises any employment, position, compensation, contract, appointment, or other benefit, provided for or made possible in whole or in part by any Act of Congress, or any special consideration in obtaining any such benefit, to any person as consideration, favor, or reward for any political activity or for the support of or opposition to any candidate or any political party in connection with any general or special election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, shall be fined not more than $1,000 or imprisoned not more than one year, or both.".

SEC. 203. Section 608 of title 18, United States Code, is amended to read as follows:

"§ 608. Limitations on contributions and expenditures

"(a)(1) No candidate may make expenditures from his personal funds, or the personal funds of his immediate family, in connection with his campaign for nomination for election, or election, to Federal office in excess of—

"(A) $50,000, in the case of a candidate for the office of President or Vice President;

"(B) $35,000, in the case of a candidate for the office of Senator; or

"(C) $25,000, in the case of a candidate for the office of Representative, or Delegate or Resident Commissioner to the Congress.

"(2) For purposes of this subsection, 'immediate family' means a candidate's spouse, and any child, parent, grandparent, brother, or sister of the candidate, and the spouses of such persons.

"(b) No candidate or political committee shall knowingly accept any contribution or authorize any expenditure in violation of the provisions of this section.

"(c) Violation of the provisions of this section is punishable by a fine not to exceed $1,000, imprisonment for not to exceed one year, or both.".

SEC. 204. Section 609 of title 18, United States Code, is repealed.

SEC. 205. Section 610 of title 18, United States Code, relating to contributions or expenditures by national banks, corporations, or labor organizations, is amended by adding at the end thereof the following paragraph:

"As used in this section, the phrase 'contribution or expenditure' shall include any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value (except a loan of money by a national or State bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business) to any candidate, campaign committee, or political party or organization, in connection with any election to any of the offices referred to in this section; but shall not include communications by a corporation to its stockholders and their families or by a labor organization to its members and their families on any subject; nonpartisan registration and get-out-the-vote campaigns by a corporation aimed at its stockholders and their families, or by a labor organization aimed at its members and their families; the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation or labor organization: *Provided*, That it shall be unlawful for such a fund to make a contribution or expenditure by utilizing money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat of force, job discrimination, or financial reprisal; or by dues, fees, or other monies required as a condition of membership in a labor organization or as a condition of employment, or by monies obtained in any commercial transaction.".

SEC. 206. Section 611 of title 18, United States Code, is amended to read as follows:

"§ 611. Contributions by Government contractors

"Whoever—

"(a) entering into any contract with the United States or any department or agency

thereof either for the rendition of personal services or furnishing any material, supplies, or equipment to the United States or any department or agency thereof or for selling any land or building to the United States or any department or agency thereof, if payment for the performance of such contract or payment for such material, supplies, equipment, land, or building is to be made in whole or in part from funds appropriated by the Congress, at any time between the commencement of negotiations for and the later of (1) the completion of performance under, or (2) the termination of negotiations for, such contract or furnishing of material, supplies, equipment, land or buildings, directly or indirectly makes any contribution of money or other thing of value, or promises expressly or impliedly to make any such contribution, to any political party, committee, or candidate for public office or to any person for any political purpose or use; or

"(b) knowingly solicits any such contribution from any such person for any such purpose during any such period;

shall be fined not more than $5,000 or imprisoned not more than five years, or both.".

SEC. 207. The table of sections for chapter 29 of title 18, United States Code, is amended by—

(1) striking out the item relating to section 608 and inserting in lieu thereof the following:

"608. Limitations on contributions and expenditures.";

(2) striking out the item relating to section 609 and inserting in lieu thereof the following:

"609. Repealed.";

(3) striking out the item relating to section 611 and inserting in lieu thereof the following:

"611. Contributions by Government contractors.".

TITLE III—DISCLOSURE OF FEDERAL CAMPAIGN FUNDS

DEFINITIONS

SEC. 301. When used in this title—

(a) "election" means (1) a general, special, primary, or runoff election, (2) a convention or caucus of a political party held to nominate a candidate, (3) a primary election held for the selection of delegates to a national nominating convention of a political party, (4) a primary election held for the expression of a preference for the nomination of persons for election to the office of President, and (5) the election of delegates to a constitutional convention for proposing amendments to the Constitution of the United States;

(b) "candidate" means an individual who seeks nomination for election, or election, to Federal office, whether or not such individual is elected, and, for purposes of this paragraph, an individual shall be deemed to seek nomination for election, or election, if he has (1) taken the action necessary under the law of a State to qualify himself for nomination for election, or election, to Federal office, or (2) received contributions or made expenditures, or has given his consent for any other person to receive contributions or make expenditures, with a view to bringing about his nomination for election, or election, to such office;

(c) "Federal office" means the office of President or Vice President of the United States; or of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress of the United States;

(d) "political committee" means any committee, association, or organization which accepts contributions or makes expenditures during a calendar year in an aggregate amount exceeding $1,000;

(e) "contribution" means—

(1) a gift, subscription, loan, advance, or deposit of money or anything of value, made for the purpose of influencing the nomination for election, or election, of any person to Federal office or as a presidential or vice-presidential elector, or for the purpose of influencing the result of a primary held for the selection of delegates to a national nominating convention of a political party or for the expression of a preference for the nomination of persons for election to the office of President, or for the purpose of influencing the election of delegates to a constitutional convention for proposing amendments to the Constitution of the United States;

(2) a contract, promise, or agreement, whether or not legally enforceable, to make a contribution for any such purpose;

(3) a transfer of funds between political committees;

(4) the payment, by any person other than a candidate or political committee, of compensation for the personal services of another person which are rendered to such can-

didate or committee without charge for any such purpose; and

(5) notwithstanding the foregoing meanings of "contribution", the word shall not be construed to include services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee;

(f) "expenditure" means—

(1) a purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made for the purpose of influencing the nomination for election, or election, of any person to Federal office, or as a presidential and vice-presidential elector, or for the purpose of influencing the result of a primary held for the selection of delegates to a national nominating convention of a political party or for the expression of a preference for the nomination of persons for election to the office of President, or for the purpose of influencing the election of delegates to a constitutional convention for proposing amendments to the Constitution of the United States;

(2) a contract, promise, or agreement, whether or not legally enforceable, to make an expenditure, and

(3) a transfer of funds between political committees;

(g) "supervisory officer" means the Secretary of the Senate with respect to candidates for Senator; the Clerk of the House of Representatives with respect to candidates for Representative in, or Delegate or Resident Commissioner to, the

Congress of the United States; and the Comptroller General of the United States in any other case;

(h) "person" means an individual, partnership, committee, association, corporation, labor organization, and any other organization or group of persons; and

(i) "State" means each State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

ORGANIZATION OF POLITICAL COMMITTEES

SEC. 302. (a) Every political committee shall have a chairman and a treasurer. No contribution and no expenditure shall be accepted or made by or on behalf of a political committee at a time when there is a vacancy in the office of chairman or treasurer thereof. No expenditure shall be made for or on behalf of a political committee without the authorization of its chairman or treasurer, or their designated agents.

(b) Every person who receives a contribution in excess of $10 for a political committee shall, on demand of the treasurer, and in any event within five days after receipt of such contribution, render to the treasurer a detailed account thereof, including the amount, the name and address (occupation and the principal place of business, if any) of the person making such contribution, and the date on which received. All funds of a political committee shall be segregated from, and may not be commingled with, any personal funds of officers, members, or associates of such committee.

(c) It shall be the duty of the treasurer of a political committee to keep a detailed and exact account of—

(1) all contributions made to or for such committee;

(2) the full name and mailing address (occupation and the principal place of business, if any) of every person making a contribution in excess of $10, and the date and amount thereof;

(3) all expenditures made by or on behalf of such committee; and

(4) the full name and mailing address (occupation and the principal place of business, if any) of every person to whom any expenditure is made, the date and amount thereof and the name and address of, and office sought by, each candidate on whose behalf such expenditure was made.

(d) It shall be the duty of the treasurer to obtain and keep a receipted bill, stating the particulars, for every expenditure made by or on behalf of a political committee in excess of $100 in amount, and for any such expenditure in a lesser amount, if the aggregate amount of such expenditures to the same person during a calendar year exceeds $100. The treasurer shall preserve all receipted bills and accounts required to be kept by this section for periods of time to be determined by the supervisory officer.

(e) Any political committee which solicits or receives contributions or makes expenditures on behalf of any candidate that is not authorized in writing by such candidate to do so shall include a notice on the face or front page of all literature and advertisements published in connection with such candidate's campaign by such committee or on its behalf stating that the committee is not authorized by such candidate and that such candidate is not responsible for the activities of such committee.

(f) (1) Any political committee shall include on the

face or front page of all literature and advertisements soliciting funds the following notice:

"A copy of our report filed with the appropriate supervisory officer is (or will be) available for purchase from the Superintendent of Documents, United States Government Printing Office, Washington, D.C. 20402.".

(2)(A) The supervisory officer shall compile and furnish to the Public Printer, not later than the last day of March of each year, an annual report for each political committee which has filed a report with him under this title during the period from March 10 of the preceding calendar year through January 31 of the year in which such annual report is made available to the Public Printer. Each such annual report shall contain—

(i) a copy of the statement of organization of the political committee required under section 303, together with any amendments thereto; and

(ii) a copy of each report filed by such committee under section 304 from March 10 of the preceding year through January 31 of the year in which the annual report is so furnished to the Public Printer.

(B) The Public Printer shall make copies of such annual reports available for sale to the public by the Superintendent of Documents as soon as practicable after they are received from the supervisory officer.

REGISTRATION OF POLITICAL COMMITTEES; STATEMENTS

SEC. 303. (a) Each political committee which anticipates receiving contributions or making expenditures during the calendar year in an aggregate

amount exceeding $1,000 shall file with the supervisory officer a statement of organization, within ten days after its organization or, if later, ten days after the date on which it has information which causes the committee to anticipate it will receive contributions or make expenditures in excess of $1,000. Each such committee in existence at the date of enactment of this Act shall file a statement of organization with the supervisory officer at such time as he prescribes.

(b) The statement of organization shall include—

(1) the name and address of the committee;

(2) the names, addresses, and relationships of affiliated or connected organizations;

(3) the area, scope, or jurisdiction of the committee;

(4) the name, address, and position of the custodian of books and accounts;

(5) the name, address, and position of other principal officers, including officers and members of the finance committee, if any;

(6) the name, address, office sought, and party affiliation of (A) each candidate whom the committee is supporting, and (B) any other individual, if any, whom the committee is supporting for nomination for election, or election, to any public office whatever; or, if the committee is supporting the entire ticket of any party, the name of the party;

(7) a statement whether the committee is a continuing one;

(8) the disposition of residual funds which will be made in the event of dissolution;

(9) a listing of all banks, safety deposit boxes, or other repositories used;

(10) a statement of the reports required to be filed by the committee with State or local officers,

and, if so, the names, addresses, and positions of such persons; and

(11) such other information as shall be required by the supervisory officer.

(c) Any change in information previously submitted in a statement of organization shall be reported to the supervisory officer within a ten-day period following the change.

(d) Any committee which, after having filed one or more statements of organization, disbands or determines it will no longer receive contributions or make expenditures during the calendar year in an aggregate amount exceeding $1,000 shall so notify the supervisory officer.

REPORTS BY POLITICAL COMMITTEES AND CANDIDATES

SEC. 304. (a) Each treasurer of a political committee supporting a candidate or candidates for election to Federal office, and each candidate for election to such office, shall file with the appropriate supervisory officer reports of receipts and expenditures on forms to be prescribed or approved by him. Such reports shall be filed on the tenth day of March, June, and September, in each year, and on the fifteenth and fifth days next preceding the date on which an election is held, and also by the thirty-first day of January. Such reports shall be complete as of such date as the supervisory officer may prescribe, which shall not be less than five days before the date of filing, except that any contribution of $5,000 or more received after the last report is filed prior to the election shall be reported within forty-eight hours after its receipt.

(b) Each report under this section shall disclose—

(1) the amount of cash on hand at the beginning of the reporting period;

(2) the full name and mailing address (occupation and the principal place of business, if any) of each person who has made one or more contributions to or for such committee or candidate (including the purchase of tickets for events such as dinners, luncheons, rallies, and similar fundraising events) within the calendar year in an aggregate amount or value in excess of $100, together with the amount and date of such contributions;

(3) the total sum of individual contributions made to or for such committee or candidate during the reporting period and not reported under paragraph (2);

(4) the name and address of each political committee or candidate from which the reporting committee or the candidate received, or to which that committee or candidate made, any transfer of funds, together with the amounts and dates of all transfers;

(5) each loan to or from any person within the calendar year in an aggregate amount or value in excess of $100, together with the full names and mailing addresses (occupations and the principal places of business, if any) of the lender and endorsers, if any, and the date and amount of such loans;

(6) the total amount of proceeds from (A) the sale of tickets to each dinner, luncheon, rally, and other fundraising event; (B) mass collections made at such events; and (C) sales of items such as political campaign pins, buttons, badges, flags, emblems, hats, banners, literature, and similar materials;

(7) each contribution, rebate, refund, or other receipt in excess of $100 not otherwise listed under paragraphs (2) through (6);

(8) the total sum of all receipts by or for such committee or candidate during the reporting period;

(9) the full name and mailing address (occupation and the principal place of business, if any) of each person to whom expenditures have been made by such committee or on behalf of such committee or candidate within the calendar year in an aggregate amount or value in excess of $100, the amount, date, and purpose of each such expenditure and the name and address of, and office sought by, each candidate on whose behalf such expenditure was made;

(10) the full name and mailing address (occupation and the principal place of business, if any) of each person to whom an expenditure for personal services, salaries, and reimbursed expenses in excess of $100 has been made, and which is not otherwise reported, including the amount, date, and purpose of such expenditure;

(11) the total sum of expenditures made by such committee or candidate during the calendar year;

(12) the amount and nature of debts and obligations owed by or to the committee, in such form as the supervisory officer may prescribe and a continuous reporting of their debts and obligations after the election at such periods as the supervisory officer may require until such debts and obligations are extinguished; and

(13) such other information as shall be required by the supervisory officer.

(c) The reports required to be filed by subsection (a) shall be cumulative during the calendar year to which they relate, but where there has been no change in an item reported in a previous report during such year, only the amount need be carried forward. If no contributions or expenditures have been accepted or expended during a calendar year, the treasurer of the political committee or candidate shall file a statement to that effect.

REPORTS BY OTHERS THAN POLITICAL COMMITTEES

SEC. 305. Every person (other than a political committee or candidate) who makes contributions or expenditures, other than by contribution to a political committee or candidate, in an aggregate amount in excess of $100 within a calendar year shall file with the supervisory officer a statement containing the information required by section 304. Statements required by this section shall be filed on the dates on which reports by political committees are filed, but need not be cumulative.

FORMAL REQUIREMENTS RESPECTING REPORTS AND STATEMENTS

SEC. 306. (a) A report or statement required by this title to be filed by a treasurer of a political committee, a candidate, or by any other person, shall be verified by the oath or affirmation of the person filing such report or statement, taken before any officer authorized to administer oaths.

(b) A copy of a report or statement shall be preserved by the person filing it for a period of time to be designated by the supervisory officer in a published regulation.

(c) The supervisory officer may, by published regulation of general applicability, relieve any category of political committees of the obligation to comply with section 304 if such committee (1) primarily supports persons seeking State or local office, and does not substantially support candidates, and (2) does not operate in more than one State or on a statewide basis.

(d) The supervisory officer shall, by published regulations of general applicability, prescribe the manner in which contributions and expenditures in the nature of debts and other contracts, agreements, and promises to make contributions or expenditures shall be reported. Such regulations shall provide that they be reported in separate schedules. In determining aggregate amounts of contributions and expenditures, amounts reported as provided in such regulations shall not be considered until actual payment is made.

REPORTS ON CONVENTION FINANCING

SEC. 307. Each committee or other organization which—

(1) represents a State, or a political subdivision thereof, or any group of persons, in dealing with officials of a national political party with respect to matters involving a convention held in such State or political subdivision to nominate a candidate for the office of President or Vice President, or

(2) represents a national political party in making arrangements for the convention of such party held to nominate a candidate for the office of President or Vice President,

shall, within sixty days following the end of the convention (but not later than twenty days prior to the

date on which presidential and vice-presidential electors are chosen), file with the Comptroller General of the United States a full and complete financial statement, in such form and detail as he may prescribe, of the sources from which it derived its funds, and the purposes for which such funds were expended.

DUTIES OF THE SUPERVISORY OFFICER

SEC. 308. (a) It shall be the duty of the supervisory officer—

(1) to develop and furnish to the person required by the provisions of this Act prescribed forms for the making of the reports and statements required to be filed with him under this title;

(2) to prepare, publish, and furnish to the person required to file such reports and statements a manual setting forth recommended uniform methods of bookkeeping and reporting;

(3) to develop a filing, coding, and cross-indexing system consonant with the purposes of this title;

(4) to make the reports and statements filed with him available for public inspection and copying, commencing as soon as practicable but not later than the end of the second day following the day during which it was received, and to permit copying of any such report or statement by hand or by duplicating machine, as requested by any person, at the expense of such person: *Provided*, That any information copied from such reports and statements shall not be sold or utilized by any person for the purpose of soliciting contributions or for any commercial purpose;

(5) to preserve such reports and statements for a period of ten years from date of receipt, except that reports and statements relating solely to candidates for the House of Representatives shall be preserved for only five years from the date of receipt;

(6) to compile and maintain a current list of all statements or parts of statements pertaining to each candidate;

(7) to prepare and publish an annual report including compilations of (A) total reported contributions and expenditures for all candidates, political committees, and other persons during the year; (B) total amounts expended according to such categories as he shall determine and broken down into candidate, party, and nonparty expenditures on the National, State, and local levels; (C) total amounts expended for influencing nominations and elections stated separately; (D) total amounts contributed according to such categories of amounts as he shall determine and broken down into contributions on the national, State, and local levels for candidates and political committees; and (E) aggregate amounts contributed by any contributor shown to have contributed in excess of $100;

(8) to prepare and publish from time to time special reports comparing the various totals and categories of contributions and expenditures made with respect to preceding elections;

(9) to prepare and publish such other reports as he may deem appropriate;

(10) to assure wide dissemination of statistics, summaries, and reports prepared under this title;

(11) to make from time to time audits and field investigations with respect to reports and statements filed under the provisions of this title, and with respect to alleged failures to file any report or statement required under the provisions of this title;

(12) to report apparent violations of law to the appropriate law enforcement authorities; and

(13) to prescribe suitable rules and regulations to carry out the provisions of this title.

(b) The supervisory officer shall encourage, and cooperate with, the election officials in the several States to develop procedures which will eliminate the necessity of multiple filings by permitting the filing of copies of Federal reports to satisfy the State requirements.

(c) It shall be the duty of the Comptroller General to serve as a national clearinghouse for information in respect to the administration of elections. In carrying out his duties under this subsection, the Comptroller General shall enter into contracts for the purpose of conducting independent studies of the administration of elections. Such studies shall include, but shall not be limited to, studies of—

(1) the method of selection of, and the type of duties assigned to, officials and personnel working on boards of elections;

(2) practices relating to the registration of voters; and

(3) voting and counting methods.

Studies made under this subsection shall be published by the Comptroller General and copies thereof shall be made available to the general public upon the payment of the cost thereof. Nothing in this subsection

shall be construed to authorize the Comptroller General to require the inclusion of any comment or recommendation of the Comptroller General in any such study.

(d)(1) Any person who believes a violation of this title has occurred may file a complaint with the supervisory officer. If the supervisory officer determines there is substantial reason to believe such a violation has occurred, he shall expeditiously make an investigation, which shall also include an investigation of reports and statements filed by the complainant if he is a candidate, of the matter complained of. Whenever in the judgment of the supervisory officer, after affording due notice and an opportunity for a hearing, any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this title or any regulation or order issued thereunder, the Attorney General on behalf of the United States shall institute a civil action for relief, including a permanent or temporary injunction, restraining order, or any other appropriate order in the district court of the United States for the district in which the person is found, resides, or transacts business. Upon a proper showing that such person has engaged or is about to engage in such acts or practices, a permanent or temporary injunction, restraining order, or other order shall be granted without bond by such court.

(2) In any action brought under paragraph (1) of this subsection, subpenas for witnesses who are required to attend a United States district court may run into any other district.

(3) Any party aggrieved by an order granted under paragraph (1) of this subsection may, at any time within sixty days after the date of entry thereof, file a petition with the United States court of

appeals for the circuit in which such person is found, resides, or transacts business, for judicial review of such order.

(4) The judgment of the court of appeals affirming or setting aside, in whole or in part, any such order of the district court shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(5) Any action brought under this subsection shall be advanced on the docket of the court in which filed, and put ahead of all other actions (other than other actions brought under this subsection).

STATEMENTS FILED WITH STATE OFFICERS

SEC. 309. (a) A copy of each statement required to be filed with a supervisory officer by this title shall be filed with the Secretary of State (or, if there is no office of Secretary of State, the equivalent State officer) of the appropriate State. For purposes of this subsection, the term "appropriate State" means—

(1) for reports relating to expenditures and contributions in connection with the campaign for nomination for election, or election, of a candidate to the office of President or Vice President of the United States, each State in which an expenditure is made by him or on his behalf, and

(2) for reports relating to expenditures and contributions in connection with the campaign for nomination for election, or election, of a candidate to the office of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress of the United States, the State in which he seeks election.

(b) It shall be the duty of the Secretary of State, or the equivalent State officer, under subsection (a)—

(1) to receive and maintain in an orderly manner all reports and statements required by this title to be filed with him;

(2) to preserve such reports and statements for a period of ten years from date of receipt, except that reports and statements relating solely to candidates for the House of Representatives shall be preserved for only five years from the date of receipt;

(3) to make the reports and statements filed with him available for public inspection and copying during regular office hours, commencing as soon as practicable but not later than the end of the day during which it was received, and to permit copying of any such report or statement by hand or by duplicating machine, requested by any person, at the expense of such person; and

(4) to compile and maintain a current list of all statements or parts of statements pertaining to each candidate.

PROHIBITION OF CONTRIBUTIONS IN NAME OF ANOTHER

SEC. 310. No person shall make a contribution in the name of another person, and no person shall knowingly accept a contribution made by one person in the name of another person.

PENALTY FOR VIOLATIONS

SEC. 311. (a) Any person who violates any of the provisions of this title shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(b) In case of any conviction under this title, where the punishment inflicted does not include imprisonment, such conviction shall be deemed a misdemeanor conviction only.

TITLE IV—GENERAL PROVISIONS

Extension of Credit By Regulated Industries

SEC. 401. The Civil Aeronautics Board, the Federal Communications Commission, and the Interstate Commerce Commission shall each promulgate, within ninety days after the date of enactment of this Act, its own regulations with respect to the extension of credit, without security, by any person regulated by such Board or Commission to any candidate for Federal office (as such term is defined in section 301(c) of the Federal Election Campaign Act of 1971), or to any person on behalf of such a candidate, for goods furnished or services rendered in connection with the campaign of such candidate for nomination for election, or election, to such office.

Prohibition Against Use of Certain Federal Funds for Election Activities

SEC. 402. No part of any funds appropriated to carry out the Economic Opportunity Act of 1964 shall be used to finance, directly or indirectly, any activity designed to influence the outcome of any election to Federal office, or any voter registration activity, or to pay the salary of any officer or employee of the Office of Economic Opportunity who, in his official capacity as such an officer or employee, engages in any such activity. As used in this section, the term "election" has the same meaning given such term by section 301

(a) of the Federal Election Campaign Act of 1971, and the term "Federal office" has the same meaning given such term by section 301(c) of such Act.

EFFECT ON STATE LAW

SEC. 403. (a) Nothing in this Act shall be deemed to invalidate or make inapplicable any provision of any State law, except where compliance with such provision of law would result in a violation of a provision of this Act.

(b) Notwithstanding subsection (a), no provision of State law shall be construed to prohibit any person from taking any action authorized by this Act or from making any expenditure (as such term is defined in section 301(f) of this Act) which he could lawfully make under this Act.

PARTIAL INVALIDITY

SEC. 404. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the validity of the remainder of the Act and the application of such provision to other persons and circumstances shall not be affected thereby.

REPEALING CLAUSE

SEC. 405. The Federal Corrupt Practices Act, 1925 (2 U.S.C. 241- 256), is repealed.

EFFECTIVE DATE

SEC. 406. Except as provided for in section 401 of this Act, the provisions of this Act shall become ef-

fective on December 31, 1971, or sixty days after the date of enactment of this Act, whichever is later.

Speaker of the House of Representatives.

Vice President of the United States and President of the Senate.

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